

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:FIP:B03 / PLR-142941-02

Date:

April 10, 2003

Dear

This letter contains general information regarding making an election under § 475(f) of the Internal Revenue Code (the Code) to use the mark-to-market method of accounting.

Section 5.03(1) of Rev. Proc. 99-17 provides General Procedures for a taxpayer making an election under § 475(f) of the Code for a taxable year beginning on or after January 1, 1999. Included in this section is the requirement that a statement (described in § 5.04) must be filed no later than the due date (without regard to extensions) of the original federal income tax return for the taxable year immediately preceding the election year and must be attached either to that return, or if applicable, to a request for an extension of time to file that return.

Section 5.04 of Rev. Proc. 99-17 states that the statement referred to in § 5.03(1) must describe the election being made, the first taxable year for which the election is effective, and in the case of an election under § 475(f) of the Code, the trade or business for which the election is made. Moreover, § 6.02(2) of Rev. Proc. 99-17 (*superseded by* Rev. Proc. 99-49, 1999-2 C.B. 725, *superseded by* Rev. Proc. 2002-9, 2002-1 C.B. 327) states that the original Form 3115 must be attached to the taxpayer's timely filed (including any extensions) original federal income tax return for the year of change.

Section 4 of Rev. Proc. 99-17 states that if a taxpayer described in § 3 (Scope) makes an election under § 5, and the taxpayer's method of accounting for its taxable year immediately preceding the election year is inconsistent with § 475 of the Code, the taxpayer is required to change its method of accounting to comply with its election.

The filing of the statement required by §§ 5.03(1) and 5.04 of Rev. Proc. 99-17 is the operative procedure for properly making an election under § 475(f) of the Code; the filing of Form 3115 is an administrative requirement to implement the election.

Consequently, the fact that a taxpayer's Form 3115 is attached to an untimely filed federal income tax return will not negate an otherwise properly made election under § 475(f) of the Code. If you have any questions about this letter please call the undersigned or _____ at _____

Sincerely yours,
Alice M. Bennett
Chief, Branch 3
Office of Associate
Chief Counsel
(Financial Institutions and
Products)

By _____
Robert B. Williams,
Senior Counsel

Enclosures:

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